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BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte JAMES DOUGLAS FREE, KENNETH OWEN MICHIE, and CHANDRA MOULI RAVIPATI

Appeal 2016-007847
Application 12/893,143[1]
Technology Center 2400

Before JAMES R. HUGHES, MATTHEW J. McNEILL, and SCOTT E. BAIN, *Administrative Patent Judges*.

BAIN, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final Rejection of claims 1, 2, 4–9, and 11–20. Claim 10 has been cancelled. Claims 3 and 21 are objected to as being dependent upon a rejected base claim, but the Examiner indicates these claims would be allowable if rewritten in independent form including all the limitations of the base claim and intervening claims. App. Br. 2. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

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[1] Appellants identify Avaya Inc. as the real party in interest. App. Br. 2.

STATEMENT OF THE CASE

The Claimed Invention

The claimed invention relates to an automated process for provisioning communication services to a user, and specifically, to provide redundancy (backup) in an efficient manner. Spec. ¶¶ 1–2. Claims 1, 11, and 18 are independent. Claim 1 is illustrative of the invention and the subject matter of the appeal, and reads as follows:

> 1. A method for automatically determining user data redundancy, comprising:
>
> receiving, by a default session manager, a Session Initiation Protocol (SIP) registration request from an Internet Protocol-enabled (IP-enabled) phone;
>
> the default session manager determining a location of the IP-enabled phone;
>
> the default session manager determining a load factor on two or more session managers in a cluster of session managers;
>
> the default session manager determining a location of the two or more session managers within the cluster of session managers;
>
> based on the location of the IP-enabled phone, the load factor on the two or more session managers, and the location of the two or more session managers within the cluster of session managers, automatically determining a set of session managers, which set includes *a primary session manager* and *a secondary session manager*, that will manage user data for the IP-enabled phone;
>
> the default session manager sending a SIP message to the IP-enabled phone, wherein the SIP message includes information about the set of session managers;

> the default session manager broadcasting information about the set of session managers and the IP-enabled phone to at least one other session manager in the cluster;
>
> the set of session managers thereafter managing user data for the IP-enabled phone;
>
> *the primary session manager receiving an unregister request;*
>
> *based on receiving the unregister request, the primary session manager removing the set of session managers information; and*
>
> *the primary session manager broadcasting the removal of the session manager set information to the cluster.*

App. Br. 13 (Claims App'x) (emphases and formatting added).

The Rejection on Appeal

Claims 1, 2, 4–9, and 11–20 stand rejected under pre-AIA 35 U.S.C. § 103(a) as unpatentable over Belinchón Vergara et al. (US 2010/0217875 A1; Aug. 26, 2010) ("Belinchón"), Shaikh et al. (US 2011/0142015 A1; June 16, 2011) ("Shaikh"), Herrero et al. (US 2005/0009520 A1; Jan. 13, 2005) ("Herrero"), Shen (US 2009/0092061 A1; Apr. 9, 2009), and daCosta et al. (US 2010/0177766 A1; July 15, 2010) ("daCosta"). Final Act. 2–14.

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' arguments presented in this appeal. Arguments which Appellants could have made but did not make in the Briefs are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(iv). On the record before us, we are not persuaded the Examiner erred. We adopt as our own the findings and reasons set forth

in the rejections from which the appeal is taken and in the Examiner's Answer, and provide the following for highlighting and emphasis.

Appellants argue the Examiner erred in finding the prior art teaches or suggests the following limitations recited in claim 1: (i) "the primary session manager receiving an unregister request;" (ii) "based on receiving the unregister request, the primary session manager removing the set of session managers information;" and (iii) "the primary session manager broadcasting the removal of the session manager set information to the cluster." App. Br. 7–11.[2] Appellants further argue the Examiner erred in combining the references because Shen teaches away from Belinchón, and because the Examiner lacked a rationale for the combination of daCosta with the other references. *Id.* at 9, 11. We, however, are unpersuaded of error.

With regard to the disputed claim limitations, we agree with the Examiner that Appellants' argument relies on arguing the references individually rather than addressing the cited combination of references for each element. Ans. 16–20; *see In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986) ("Non-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references."). We discern no error in the Examiner's finding that Belinchón teaches "primary" and "secondary" session managers, Ans. 16–17 (citing Belinchón ¶¶ 39, 96), and that the combination of Belinchón with Shen teaches the primary session manager "receiving an unregister

[2] Appellants group independent claims 1, 11, and 18 together for argument, and we choose claim 1 as representative of the group. 37 C.F.R. § 41.37(c)(1)(iv).

request" and "removing the set of sessions managers information" based on that request, as recited in claim 1. Ans. 17 (citing Shen ¶¶ 54–55, 63). Appellants' argument, App. Br. 8, that "Shen teaches nothing more than [Belinchón]" and "fails . . . for the same reasons as [Belinchón]" ignores the combination cited by the Examiner. *See In re Merck & Co., Inc.*, 800 F.2d at 1097.

We further discern no error in the Examiner's finding that daCosta teaches "broadcasting information" about the set of session managers to other session managers in the cluster, and combined with the other references, teaches "the primary session manager broadcasting the removal of the session manager set information to the cluster." Ans. 20 (citing daCosta ¶ 23 ("each change in the local SIP server of a VoIP node is broadcast to the remaining nodes in the cluster")); *see also* daCosta ¶¶ 16, 18. Appellants argue the SIP registry of daCosta is different than the claimed "session managers," App. Br. 11, but, again, this argument does not address the combination of daCosta with the other references relied upon by the Examiner, including Belinchón's teaching of primary and secondary session managers. Ans. 19–20; *see In re Merck & Co., Inc.*, 800 F.2d at 1097.

Finally, we are not persuaded the Examiner erred in combining the references. As the Examiner finds, Shen does not teach away from Belinchón because Shen teaches the desire to "avoid overload situation[s]" due to "additional load burst," Shen ¶ 18, which is achieved by modifying Belinchon to cause the "primary server" to remove the set of the session manager information in response to an unregister request. Ans. 17; *see also* Final Act. 4–6. Regarding the combination of daCosta with the other

references, App. Br. 11, the Examiner finds a person of ordinary skill in the art would understand daCosta's teaching of sending a "single message to multiple destinations" would be applicable and advantageous to the network elements taught in Belinchón and Shen. Ans. 20. In other words, the "suggestion for [combining the references] would have been to enable the system to send a single message to multiple destinations," an elementary concept in network communications understood by one of ordinary skill in the art. *Id.* Appellants identify nothing in the record that demonstrates error in the Examiner's finding, and we find none.

Accordingly, we sustain the obviousness rejection of independent claims 1, 11, and 18. Appellants argue the Examiner erred in rejecting the remaining claims, all of which are dependent, "for at least the same reasons" as the independent claims. App. Br. 12. Because we sustained the rejection of the independent claims, we also sustain the obviousness rejection of the dependent claims.

DECISION

We affirm the Examiner's rejections of claims 1, 2, 4–9, and 11–20.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 41.50(f).

AFFIRMED